

**PROGRESSIVE SPECIALTY INSURANCE COMPANY**

**6085 Parkland Blvd  
Mayfield Heights, Ohio 44124**

**NAIC COMPANY CODE 32786**

**MARKET CONDUCT EXAMINATION REPORT  
as of December 31, 2003**

**PREPARED BY INDEPENDENT CONTRACTORS FOR THE  
COLORADO DEPARTMENT OF REGULATORY AGENCIES  
DIVISION OF INSURANCE**

**PROGRESSIVE SPECIALTY INSURANCE COMPANY**  
**6085 Parkland Blvd**  
**Mayfield Heights, Ohio 44124**

**MARKET CONDUCT**  
**EXAMINATION REPORT**  
**as of**  
**December 31, 2003**

**Prepared by**

**James T. Axman, CIE**

**Frederick T. Verny, Jr., AIE, FLMI**

**Independent Contract Examiners**

November 19, 2004

The Honorable Doug Dean  
Commissioner of Insurance  
State of Colorado  
1560 Broadway Suite 850  
Denver, Colorado 80202

Commissioner Dean:

In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., an examination of selected underwriting, rating, and claims practices of PROGRESSIVE SPECIALTY INSURANCE COMPANY'S, private passenger automobile business, has been conducted. The Company's underwriting records were examined at its Home Office, 6085 Parkland Blvd, Mayfield Heights, Ohio, 44124. The Claim records were examined at its Regional Claims office, 7245 Havana Street, Suite 600, Englewood, Colorado, 80112.

The examination covered a one-year period from January 1, 2003 to December 31, 2003.

A report of the examination of PROGRESSIVE SPECIALTY INSURANCE COMPANY is, herewith, respectfully submitted.

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James T. Axman, CIE

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Frederick T. Verny, Jr., AIE, FLMI

Independent Market Conduct Examiners

**MARKET CONDUCT  
EXAMINATION REPORT  
OF THE  
PROGRESSIVE SPECIALTY INSURANCE COMPANY**

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**COMPANY PROFILE**

PROGRESSIVE SPECIALTY INSURANCE COMPANY (PSIC) is a wholly owned stock subsidiary of Progressive Casualty Insurance Company. Progressive Casualty Insurance Company is a wholly owned subsidiary of Progressive Agency Holdings, Inc., whose parent is The Progressive Corporation, an insurance holding company. PSIC was incorporated in the State of Ohio on August 4, 1975 for the purpose of transacting insurance business, except life insurance, in various classes of insurance set forth in the Ohio insurance laws. PSIC was admitted in the state of Colorado in December 1978. During 2003, PSIC wrote \$19 million in premium for private passenger automobile insurance in Colorado.

\*As of the calendar year 2003 the Company had reported premium in Colorado of \$22,826,000 for Private Passenger Automobile Insurance, representing a 0.79 % market share.

\*Data as reported in the 2003 Colorado Insurance Industry Statistical report.

### **PURPOSE AND SCOPE OF EXAMINATION**

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law §10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the examination was to determine the Company's compliance with Colorado insurance law and with generally accepted operating principles related to Private Passenger Automobile insurance laws. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Colorado Division of Insurance. In reviewing material for this report the examiners relied primarily on records and material maintained by the Company. The examination covered a twelve (12) month period of the Company's operations, from January 1, 2003 to December 31, 2003.

File sampling was based on a review of underwriting and claims files that were systematically selected by using ACL™ software and computer data files provided by the company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file any concerns or discrepancies were noted on comment forms and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of each sample the Company was provided a summary of the findings for that sample. The examination report is a report by exception. Therefore, much of the material reviewed is not addressed in this written report. Reference to any practices, procedures, or files, which manifested no improprieties, was omitted.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of the examination (e.g. timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

The report addresses only Private Passenger Automobile issues and contains information regarding exceptions to Colorado insurance law. The examination included review of the following:

1. Company Operations and Management
2. Underwriting
3. Rating
4. Claims Practices

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance. Examination findings may result in administrative action by the Division of Insurance.

**EXAMINERS' METHODOLOGY**

The examiners reviewed the Company's Private Passenger Automobile underwriting, rating, and claims practices to determine compliance with the Colorado insurance law as outlined in Exhibit 1.

**Exhibit 1**

| <b>Law</b>          | <b>Subject</b>  |
|---------------------|---|
| Section 10-1-128    | Fraudulent Insurance Acts.  |
| Section 10-4-413    | Records required to be maintained   |
| Section 10-4-602.   | Basis for Cancellation.   |
| Section 10-4-603.   | Notice.   |
| Section 10-4-604.   | Nonrenewal.   |
| Section 10-4-605.   | Proof of notice.  |
| Section 10-4-609.   | Insurance protection against uninsured motorists-applicability.   |
| Section 10-4-610.   | Property damage protection against uninsured motorists.   |
| Section 10-4-611.   | Elimination of discounts – damage by uninsured motorist.  |
| Section 10-4-613.   | Glass repair and replacement.   |
| Section 10-4-614.   | Inflatable restraint systems - replacement - verification of claims.  |
| Section 10-4-626    | Prohibited reasons for nonrenewal or refusal to write auto  |
| Section 10-4-627    | Discriminatory standards-proof of financial responsibility  |
| Section 10-4-628    | Refusal to write – changes in – cancellation-nonrenewal prohibited  |
| Section 10-4-629    | Cancellation-renewal-reclassification   |
| Section 10-4-630    | Exclusion of named driver   |
| Section 10-4-632    | Reduction in rates for drivers aged 55 or older with drivers education  |
| Section 10-4-633    | Certification of policy and notice forms  |
| Section 10-4-706.   | Required coverages - complying policies - PIP examination program   |
| Section 10-4-706.5. | Operator's policy of insurance.   |
| Section 10-4-707.5. | Ridesharing arrangements - benefits payable - required coverage.  |
| Section 10-4-708.   | Prompt payment of direct benefits.  |
| Section 10-4-709.   | Coordination of benefits.   |
| Section 10-4-710.   | Required coverages are minimum.   |
| Section 10-4-711.   | Required provision for intrastate and interstate operation.   |
| Section 10-4-713.   | No tort recovery for direct benefits.   |
| Section 10-4-714.   | Limitation on tort actions.   |
| Section 10-4-715.   | No limitation on tort action against non-complying tort-feasors.  |
| Section 10-4-717.   | Inter-company arbitration.  |
| Section 10-4-718.   | Quarterly premium payments.   |
| Section 10-4-719.   | Prohibited reasons for nonrenewal or refusal to write a policy of automobile insurance applicable to this part 7. |
| Section 10-4-719.5. | Discriminatory standards - premiums - surcharges - proof of financial responsibility requirements.                |
| Section 10-4-719.7. | Refusal to write, changes in, cancellation, or nonrenewal of policies prohibited.                                 |



|                    |   |
|--------------------|---|
| Section 10-4-720.  | Cancellation - renewal - reclassification.  |
| Section 10-4-721.  | Exclusion of named driver.  |
| Section 10-4-724.  | Reduction in rates for drivers aged fifty-five years or older who complete a driver's education course - legislative declaration. |
| Section 10-4-725.  | Certification of policy and notice forms.   |
| Section 10-3-1103. | Unfair methods of competition and unfair or deceptive acts or practices prohibited.   |
| Section 10-3-1104. | Unfair methods of competition and unfair or deceptive acts or practices.  |
| Regulation 1-1-7.  | Market Conduct Record Retention.  |
| Regulation 1-1-8   | Penalties And Timelines Concerning Division Inquiries And Document Requests   |
| Regulation 5-1-2.  | Application and Binder Forms.   |
| Regulation 5-1-10. | Rate and Rule Filing Regulation   |
| Regulation 5-1-16. | Limitations on the Use of Credit Information or Insurance Score   |
| Regulation 5-2-1.  | Relative Value Schedule for No Fault.   |
| Regulation 5-2-2.  | Renewal of Automobile Insurance Policies – Excluded Named Drivers.  |
| Regulation 5-2-3.  | Amended Auto Accident Reparations Act (No Fault) Rules and Regulations  |
| Regulation 5-2-6.  | Automobile No Fault Cost Containment Options.   |
| Regulation 5-2-8.  | Timely Payment of Personal Protection Benefits.   |
| Regulation 5-2-9.  | Personal Injury Protection Examination Program.   |
| Regulation 5-2-11  | Transition from No-Fault Auto to Tort System.   |
| Regulation 5-2-12  | Automobile Insurance Consumer Protections.  |
| Regulation 6-1-1.  | Limiting coverage.  |
| Regulation 6-2-1.  | Complaint Record Maintenance.   |

### **Company Operations/Management**

The examiners reviewed Company management, implementation, and quality controls, record retention, installment payment plans, anti-fraud plan, forms certification, and timely cooperation with the examination process.

### **Complaints**

The examiners reviewed the complaint database log maintained by the Division of Insurance as a general guideline to determine complaint activity for the period under examination.

**Contract Forms and Endorsements**

The following Private Passenger Automobile forms and endorsements were filed for certification with the Colorado Division of Insurance on July 1, 2003: These forms were also reviewed to determine compliance with the Colorado law.

| <b>Title</b>  | <b>Form</b>           |
|---|-----------------------|
| PIP Disclosure and Selection Form                                   | 278 CO7 (07/01)       |
| PIP Disclosure and Selection Form                                   | 278 CO6 (07/01)       |
| PIP Disclosure and Selection Form                                   | 278 CO (07/02)        |
| Summary Disclosure Form   | 0006 (08/98)          |
| Combination Auto Policy Summary Disclosure Form                     | 0006 (05/03)          |
| Lienholder Notice   | 0007 (12/02)          |
| Notice to Insured   | 0090 (04/00)          |
| Quote Gold Card   | 01221C (11/00)        |
| New Business Gold Card  | 01221K (11/00)        |
| Declarations Page   | 1113 (06/97)          |
| ProRater Application  | 1211 CO (07/01)       |
| ProRater Application  | 1211 CO (05/03)       |
| Uninsured/Underinsured Motorist Coverage – Election of Lower Limits | 2702 CO (07/99)       |
| AutoPro Application   | 2725 CO (07/01)       |
| AutoPro Application   | 2725 CO (05/03)       |
| Company Transfer Letter   | 2899 (01/01)          |
| Policy Review Letter (Quote Letter)                                 | 3444 (12/92)          |
| Credit Card Authorization   | 4615 (03/99)          |
| Credit Card Monthly Payment Authorization                           | 4615 (07/01)          |
| Colorado PIP Coverage Endorsement                                   | 5271 CO (08/99)       |
| Important Information about your policy                             | 5276 CO (09/02)       |
| PIP Disclosure and Selection Form                                   | 5278 CO (07/02)       |
| Policy Rescission Notice  | 5552 (01/00)          |
| Notice of Changes to the Policy Contract                            | 5894 CO (05/03)       |
| Notice of Cancellation  | 6167 (05/92), (06/83) |
| EFT Confirmation  | 6168 (07/95)          |
| Company Name Change Endorsement                                     | 6239 (05/02)          |
| Authorization   | 6252 (01/01)          |
| Authorization for Electronic Payments (ACH Debits)                  | 6252 (01/03)          |
| Installment Bill  | 6266 (11/00)          |
| Endorsement Bill  | 6267 (11/00)          |
| Non-Pay Cancel Notice   | 6268 (11/00)          |
| Final Cancel Notice (Collection Letter)                             | 6269 (11/00)          |
| Reinstate   | 6270 (11/00)          |
| Short Down Pay Cancel   | 6271 (11/00)          |
| Driving History Clean Notice  | 6277 (04/02)          |
| PIP Disclosure and Selection Form (Direct Business)                 | 6278 (07/01)          |
| PIP Disclosure and Selection Form (Direct Business)                 | 6278 (07/02)          |
| Change in PIP Coverage Available                                    | 6279 (01/01)          |

|   |                 |
|---|-----------------|
| Change in PIP Coverage Available                | 6280 (01/01)    |
| Renewal Reminder Bill                           | 6480 (03/01)    |
| Driving History Notice Not Clean                | 6481 (04/02)    |
| Renewal Quote                                   | 6482 (09/01)    |
| ID Card   | 6484 CO (07/01) |
| Notice of Adverse Action                        | 6487 (03/02)    |
| Progressive Privacy Policy                      | 6488 (03/02)    |
| Declarations Page                               | 6489 CO (05/02) |
| Notice of Cancellation (Revised Non-Pay Cancel) | 7023 CO (03/96) |
| Colorado Motor Vehicle Policy Endorsement       | 7851 CO (07/01) |
| Colorado Motor Vehicle Policy Endorsement       | 7895 (10/01)    |
| Motor Vehicle Policy Endorsement                | 7951 CO (09/02) |
| Server Based Rating (SBR) Application           | 7982 CO (04/03) |
| Reinstate Notice                                | 8118 (07/77)    |
| Automated Customer Communication                | 8119 (02/88)    |
| Colorado SR22                                   | 8123 (12/80)    |
| Notice of Cancellation/Notice of Nonrenewal     | 8145 CO (10/00) |
| Cancel/Non-renewal Notice (Manual Form)         | 8145 CO (06/00) |
| Notice of Premium Increase                      | 8231 CO (05/00) |
| Colorado Renewal Notice (Manual Uprating Form)  | 8231 CO (05/03) |
| NSF Cancel                                      | 8455 (07/99)    |
| Named Driver Exclusion Election                 | 9330 (06/95)    |
| Named Driver Exclusion Election                 | 9330 (01/00)    |
| Named Driver Exclusion Election                 | 9330 (09/02)    |
| Named Driver Exclusion Election                 | 9330 (02/03)    |
| Colorado Motor Vehicle Policy                   | 9608 CO (06/01) |
| Colorado Motor Vehicle Policy                   | 9608 CO (05/03) |
| Roadside Assistance Endorsement                 | 9864 (04/98)    |
| Loan/Lease Renewal Notification Form            | 9887 (07/98)    |
| ID Card   | 18245C          |
| Points Letter                                   | L0003 (03/01)   |
| Federal Privacy Notice                          | L2835CO         |

**In-force Business /Cancellations/Non-renewals/Surcharges/PIP Conversion**

For the period under examination, systematically selected samples were taken as follows:

| <b>Review Lists</b> | <b>Population</b> | <b>Sample Size</b> | <b>Percentage to Population</b> |
|---------------------|-------------------|--------------------|---------------------------------|
| In-Force Business   | 23,163            | 100                | 2%                              |
| Cancellations Other | 2,585             | 50                 | 5%                              |
| Nonrenewals         | 218               | 50                 | 44%                             |
| Surcharges          | 2,329             | 50                 | 5%                              |
| PIP Conversion      | 10,870            | 100                | 1%                              |

**Rating**

The examiners reviewed the rate, rule filings, statistical justifications, and methodology submitted to Colorado Division of Insurance for the period under examination. This information was compared against a sample of in-force policies, rated by coverage selection, to determine compliance with filed base rates, territory codes, symbols, class plans, discounts, tier-rating factors, and final premium calculations.

**Claims**

For the period under examination, the examiners systematically selected the following samples to determine compliance with claims handling practices and manual rules:

| <b>Review Lists</b>   | <b>Population</b> | <b>Sample Size</b> | <b>Percentage to Population</b> |
|-----------------------|-------------------|--------------------|---------------------------------|
| Claims Paid           | 2,795             | 50                 | 6%                              |
| Claims Paid - PIP     | 933               | 50                 | 19%                             |
| Claims Not Paid - CWP | 1,810             | 50                 | 4%                              |

**EXAMINATION REPORT SUMMARY**

It was agreed by all parties involved, the Company, the Colorado Division of Insurance, and the examiners, that because claims operations, management, location and handling were similar with all companies of the Progressive Companies group, in those cases where it appeared that a Claims comment form may be applicable to the Progressive Specialty Insurance Company, the examiners would include language in the final examination report to "deem" the findings applicable, even though the actual findings may have been exclusively identified in Progressive Casualty Insurance Company only during the scope of the examination for the year 2003.

In the Underwriting phases of the examination, a separate review of nonrenewals, cancellations, surcharges, in-force, and PIP conversion policies were conducted for both Progressive Casualty and Progressive Specialty Insurance Companies.

The Colorado Division of Insurance reserved the right to exam any Company of the group should circumstances arise which would warrant another examination.

The examination resulted in one (1) issue arising from the Company's apparent failure to comply with Colorado insurance laws that govern all property and casualty insurers operating in Colorado.

**Company Operations and Management:**

In the area of company operations and management no compliance issue is addressed in this report.

**Complaint Handling:**

In the area of complaint handling, no compliance issues are addressed in this report.

**Underwriting:**

In the area of underwriting, no compliance issues are addressed in this report.

**Rating:**

In the area of rating, no compliance issues are addressed in this report.

**Claim Practices:**

In the area of claim practices, one (1) compliance issue is addressed in this report. The issue arises from Colorado insurance law requirements dealing with the fair and equitable settlement of claims, claims handling practices, payment of PIP claim benefits, and the timeliness and accuracy of claim payments. The issue in this phase was identified as follows:

- **Delay, in some cases, in the payment of PIP benefits**

It is recommended that the Company review its claim handling practices and procedures and make necessary changes to ensure future compliance with applicable statutes and regulations as to the issue addressed.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

Results of previous Market Conduct Exams are available on the Colorado Division of Insurance's website at [www.dora.state.co.us/insurance](http://www.dora.state.co.us/insurance) or by contacting the Colorado Division of Insurance.

**PROGRESSIVE SPECIALTY INSURANCE COMPANY**

**PERTINENT FACTUAL FINDINGS**

**PERTINENT FACTUAL FINDINGS**

**CLAIMS PRACTICES**



**Issue A: Delay, in some cases, in the payment of PIP benefits.** *(This issue was deemed from the findings of Progressive Casualty Company.)*

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, provides, in part:

(1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(h) Unfair claim settlement practices: Committing or performing, either in willful violation of this part 11 or with such frequency as to indicate a tendency to engage in a general business practice, any of the following:

(II) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

Section 10-4-708 C.R.S., Prompt payment of direct benefits, provides, in part:

(1) Payment of benefits under the coverages enumerated in section 10-4-706(1)(b) to (1)(e) or alternatively, as applicable, section 10-4-706(2) or (3) shall be made on a monthly basis. Benefits for any period are overdue if not paid within thirty days after the insurer receives reasonable proof of the fact and amount of expenses incurred during that period; except that an insurer may accumulate claims for periods not exceeding one month, and benefits are not overdue if paid within fifteen days after the period of accumulation.

Additionally, Amended Regulation 5-2-8 [Amended and effective September 1, 2000], Timely Payment of Personal Injury Protection Benefits, jointly promulgated by the Commissioner of Insurance and the Executive Director of the Department of Revenue pursuant to §§10-1-109, 10-4-704, 10-4-708(1.3), and 10-3-1110(1), C.R.S.

### Section 3. Rule

#### B. Prompt Payment of PIP Benefits

Section 10-4-708(1), C.R.S. provides that benefits under the coverages enumerated in §10-4-706, C.R.S. are overdue if not paid within 30 days after the insurer receives reasonable proof of the fact and amount of the expenses incurred.

The following chart illustrates the significance of error versus the population and sample examined:

**Private Passenger Auto PIP Claims Paid**

| <b>Population</b> | <b>Sample Size</b> | <b>Number of Exceptions</b> | <b>Percentage to Sample</b> |
|-------------------|--------------------|-----------------------------|-----------------------------|
| 803               | 50                 | 7                           | 14%                         |

An examination of fifty (50) PIP paid claim files, representing 16% of all PIP claim files paid by the Company during the examination period, showed seven (7) exceptions (14% of the sample) wherein the Company failed to pay at least one PIP medical bill in each file within the thirty (30) day statutory standard as required by Colorado insurance law.

**Recommendation # 1:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-3-1104 and 10-4-708, C.R.S. and Colorado [Amended] Regulation 5-2-8. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed its claims handling of PIP benefit payments and implemented necessary procedural changes in order to ensure compliance with Colorado insurance law.

**Summary of Recommendations***Progressive Specialty Insurance Company*

| <b><u>ISSUE</u></b>   | <b><u>REC #</u></b> | <b><u>CF</u></b> | <b><u>PAGE</u></b> |
|---|---------------------|------------------|--------------------|
| <b>Claims</b>   |                     |                  |                    |
| <b>A:</b> Delay, in some cases, in the payment of PIP benefits. | 1                   | 1                | 18                 |

Independent Market Conduct Examiners

James T. Axman, CIE

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Participated in this examination and in the preparation of this report